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October 28, 1993

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Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M. Street, N.W.
Washington, D.C. 20554

RE: *PETITION FOR RULEMAKING*
SILVERTON, COLORADO

Dear Ms. Searcy,

Herewith is an original and five copies of a Petition for Rulemaking, seeking to delete FM channel 257A at Silverton, Colorado.

Please date-stamp and return one copy of the petition to me in the prepaid self-addressed envelope.

The original and four copies should then be routed to the appropriate offices for processing pursuant to Section 1.420 of the Commission's rules.

If you have any questions relating to the enclosed material, kindly contact the undersigned.

Respectfully,

Caren Lacy

Caren Lacy
Petitioner
1885 Ponder Heights Drive
Colorado Springs, Colorado
80906-5888

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Enclosures

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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In the Matter of)
)
Amendment of Section 73.202(b))
Table of Assignments)
FM Broadcast Stations)
(Silverton, Colorado))

PETITION FOR RULEMAKING

Caren Lacy, (hereafter, Lacy) pursuant to Section 1.401(a) of the Rules respectfully requests that the Commission amend the FM Table of Assignments, Section 73.202(b) by deleting Channel 257A (99.3 MHz) at Silverton, Colorado. In support of this request, Lacy submits as follows:

1. Silverton, Colorado is a community with a population of less than 1,000 persons in a deep valley in the San Juan Mountains of southwestern, Colorado. Consistent with FM Assignment Policies and Procedures, 90 FCC 2d 88, 51 RR2d 807, 814 (1982), the Commission has never considered the size of Silverton, Colorado in the allotment process, and in response to previous petitions has allocated *three* FM channels to this small community, all in addition to a Class IV AM assignment. Only a single operator ever actually constructed any Silverton broadcast facility. Those stations

subsequently failed, and the licensee's whereabouts are unknown. On October 19, 1992, the Commission received an application for the failed station's allotment at Channel 279C2 (103.7 MHz), assigning the application file number BPH-921019MB. No other facilities were ever constructed in Silverton, and there is no record of any proposed further use of any other allotted channel.

2. One of the unused FM assignments in Silverton, Colorado is Channel 257A (99.3 MHz), which exists with reference coordinates of $37^{\circ} 48' 42''$ North Latitude and $107^{\circ} 40' 00''$ West Longitude.

3. On January 25, 1991 the Commission allocated Channel 259C2 (99.7 MHz) to Durango, Colorado at the request of Caren Lacy, petitioner.

4. On February 27, 1991, Lacy submitted her application for a construction permit for Channel 259C2, requesting a maximum service facility, pursuant to the appropriate class of service. The proposed construction, (with reasonable assurance of a site lease from the Forest Service) was designated at $37^{\circ} 19' 59''$ North Latitude by $107^{\circ} 49' 13''$ West Longitude, conforming to all spacing requirements. On May 12, 1992 the Commission granted Lacy's application and issued a construction permit to build the proposed station, assigning the permit file number BPH-910227-MG.

5. In accordance with its established policy, the Forest Service will not accept antenna site lease applications from parties who do not have actual transmitting authorization from the Commission; Construction Permit applicants do not qualify. Therefore, upon receiving the construction permit, Lacy applied to the Forest Service, who has now instituted a requirement of applicants, that radio installations be constructed in accordance with an antenna farm plan, designating a specific site for FM broadcast stations. The designated site is located at 37° 20' 21" North Latitude by 107° 49' 25" West Longitude, about one-half mile north of the original Lacy application site.

6. The Forest Service's designated broadcast station site will not conform to the spacing requirements for a Class C2 station on Lacy's assigned channel, 259C2, as it is short spaced to unused channel 257A at Silverton, Colorado. Therefore, in order to construct at the designated site, Lacy would be required to *downgrade*¹ from Class C2 to Class C3, and consequently, be denied the opportunity to provide service to areas and populations previously authorized. Exhibit 1 is an engineering study which illustrates that the contours conform to spacing requirements from the antenna farm site, if channel 257A is deleted as proposed.

7. Lacy has conducted a channel spacing study which reveals that, in addition to the currently allocated, but unused allotments in Silverton, Colorado, no less than five

¹ It would be possible for Lacy to downgrade to Class C3 under the minor change rules, as the site conforms to C3 spacing requirements, then seek to delete 257 A at Silverton pursuant to 1.420 (g), upgrading again to Class C2. Such a requirement would be an unreasonable hardship upon petitioner and would only serve to delay the implementation of full service to the areas affected.

more Channels are available which could be substituted for Channel 257A, should someone seek a facility in that community. The available channels are 223A, 224A, 227A, 238A, and 273A.

8. Lacy has also conducted a spacing study which reveals that there is no other class C2 channel which could be substituted for her authorization.

9. Accordingly, this petition may be granted without prejudicing any possible additional broadcast service in Silverton, while allowing Lacy to construct her facility as previously authorized, and meeting the special use requirements of the Forest Service.

10. Lacy submits that the proposed deletion, which allows her to make maximum use of her facility, is in the public interest.

11. Lacy affirms that she will seek a modification of her construction permit, amending coordinates to the Forest service designated broadcast station site, upon the deletion of Channel 257A at Silverton, Colorado, as herein proposed.


WHEREFORE, Lacy requests that the Commission issue a Notice of Proposed Rulemaking approving the deletion of Channel 267A at Silverton, Colorado. In the event that a party files an opposition to this petition, stating an interest in a Silverton allocation,

Lacy requests that one of the above listed channels be substituted for Channel 257A at Silverton, Colorado.

This Petition is hereby verified and the following mailing address of Caren Lacy is provided pursuant to Section 1.52 of the Commission's rules.

Caren Lacy
1885 Ponder Heights Drive
Colorado Springs, Colorado 80906-5888

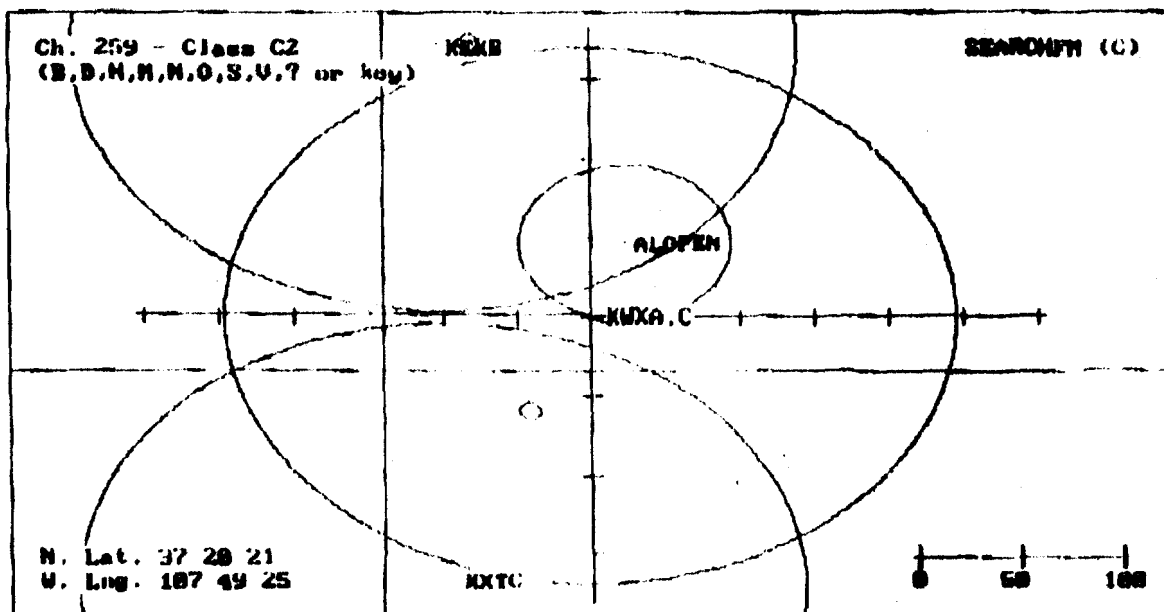
Respectfully submitted,


Caren Lacy

Dated: October 26, 1993

Proposal for Rulemaking
Caren Lacy
Exhibit 1

FM BAND
UPGRADES/RELOCATIONS/FREQUENCY SEARCHES



Search 10-29-93

Data 09-29-93

Current rules spacings

CHANNEL 259 - 99.7 MHz

CALL TYPE	CH# LAT	CITY LONG	STATE PWR	BEAR HT	D-KM D-M1	R-KM R-M1	MARGIN (KM)
KWXA.C	259C2	Durango	CO	156.5	0.74	190.0	189.26 *
CP CN	37 19 59	107 49 13	10.000 kW	268M	0.5	118.1	
		Caren Lacy			BPH910227MG		
ALOPEN	257A	Silverton	CO	17.9	54.34	55.0	-0.66 *
AL N	37 48 18	107 18 01	0.000 kW	0M	33.8	34.2	
		WO- 920921					921026
KXTC	260C	Thoreau	NM	201.7	207.29	188.0	19.29
LI CN	35 36 13	108 40 45	100.000 kW	369M	128.8	116.8	
		Dewey Matthew Runnels			BLH911101KC		
KEKB	260C	Fruita	CO	337.1	208.02	188.0	20.02
LI CN	39 03 56	108 44 52	79.000 kW	422M	129.3	116.8	
		Jan-Di Broadcasting, Inc.			BLH840604CP		